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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,)
10 Plaintiff,) 2:16-CR-00046-GMN-PAL
11 v.) GOVERNMENT'S RESPONSE IN
12 CLIVEN D. BUNDY,) OPPOSITION TO DEFENDANT
13 Defendant.) CLIVEN BUNDY'S MOTION TO
REVOKE DETENTION ORDER
(C.R. 220)
14

15 The United States, by and through the undersigned, respectfully submits its
16 Response in Opposition to defendant Cliven Bundy's ("Bundy") Objections To The
17 Magistrate Judge's order of Detention And Bundy's Motion For Revocation of the
18 Magistrate's Order of Detention Order (C.R. 220) ("Motion" or "Motion to Revoke").
19 Specifically, the Motion seeks to revoke Magistrate Judge Hoffman's Detention
20 Order of March 18, 2016 (hereinafter "Judge Hoffman's Detention Order" or "Judge
21 Hoffman's Order") (C.R. 149) (Attached at Exhibit ("Ex") 1).

22 The Motion should be denied. Bundy is charged in a sixteen-count
23 Superseding Indictment with numerous crimes of violence, including assaulting
24 federal officers with a deadly weapon, obstructing justice using force and violence,

1 extorting federal officers by force and violence, threatening federal law enforcement
2 officers with force and violence, using and brandishing a firearm in relation to a
3 crime of violence, and conspiring to commit the same. The charges arise from a
4 massive and violent armed assault against federal law enforcement officers that
5 occurred on April 12, 2014, near Bunkerville, Nevada, an assault led, organized,
6 and executed by Bundy. Having been charged with four counts of Section 924(c)
7 violations, Bundy submits nothing in his Motion to rebut the presumption of
8 detention that attaches under the Bail Reform Act. Further, the government has
9 shown by clear and convincing evidence that all of the Section 3142(g) factors weigh
10 in favor of detention, showing that no condition or combination of conditions will
11 ensure the safety of the community or mitigate the risk of non-appearance at future
12 proceedings.

13 FACTS

14 Bundy was arrested in the District of Oregon on February 10, 2016, and
15 charged by a Complaint filed in the District of Nevada on February 11, 2016. The
16 Complaint charged six felony counts arising from events that occurred at or near
17 Bunkerville, Nevada, between March 2014 and the date of the Complaint. On
18 February 11, 2016, and pursuant to Rule 5, Fed.R.Crim.P., Bundy made his initial
19 appearance on the Complaint in the District of Oregon before United States
20 Magistrate Judge Janice M. Stewart.

22 On February 16, 2016, Judge Stewart held a detention hearing pursuant to
23 the Bail Reform Act, Title 18, United States Code, Sections 3142-3156. In support
24 of its motion for detention, the government filed a detailed Memorandum

1 containing its proffer of evidence in support of detention. C.R. 24, pp. 38-71,
2 Docket Entry 24; Attached at Exhibit 5.

3 Represented by counsel, Bundy elected to proceed with the detention
4 hearing in Oregon and proffered evidence and argued in support of his release
5 prior to trial. *See* C.R. 24, p. 3, Docket Entry 7 (Minutes of Proceedings).
6 Thereafter, and after considering the information presented by both Bundy and
7 the government, Judge Stewart ordered that Bundy be detained pending trial,
8 stating:

9 I agree with the government: If he [Bundy] is released and goes back
10 to his ranch, that's likely the last the Court will see of him.

11 * * *

12 I find there is no evidence to overcome the presumption in this case
13 that he poses a danger to the community, and I cannot conceive of any
sort of restriction that I can impose on him that will assure he will
make his court appearances.

14 Transcript Oregon Detention Hearing, p. 16, attached at Ex. 2.

15 Judge Stewart thereafter entered a written Order of Detention, finding that
16 Bundy failed to rebut the presumption of detention under Title 18, United States
17 Code, Section 3142(e) – Bundy having been charged by Complaint with two felony
18 counts in violation of Title 18, United States Code, Section 924(c) – and that no
19 conditions or combination of conditions could either assure his appearance at trial
20 (citing Bundy's previous failures to follow court orders) or reasonably assure the
21 safety of other persons or the community (citing the Section 3142(g) factors). *See*
22 Order of Detention After Hearing (18 U.S.C. § 3142(i)) (C.R. 24, p. 75) (Attached
23

1 as Exhibit 3) (hereinafter “Judge Stewart’s Order” or “Judge Stewart’s Detention
2 Order”). Bundy did move to revoke Judge Stewart’s Order.

3 On February 17, 2016, Bundy was charged in a sixteen-count Indictment
4 arising from the events in and around Bunkerville, Nevada, the same events that
5 were the subject of the Complaint. The Indictment charged four felony counts in
6 violation of Title 18, United States Code, Section 924(c). On February 18, 2016,
7 Magistrate Judge Stewart vacated Bundy’s Preliminary Hearing on the Complaint
8 and entered an Order committing him to the District of Nevada to stand trial on
9 the Indictment.

10 Bundy was transferred to the District of Nevada. On March 2, 2016, Bundy
11 was charged in a sixteen-count Superseding Criminal Indictment, charging him
12 with violations of Title 18, United States Code, Section 371 (Conspiracy to Commit
13 an Offense Against the United States), 372 (Conspiracy to Impede and Injure a
14 Federal Officer), 111 (a) and (b) (Assault on a Federal Officer); 115(a)(1)(B) (Threat
15 Against a Federal Officer); 1503 (Obstruction of Justice); 1951 (Interference with
16 Interstate Commerce by Threat); and 1952 (Interstate Travel in Aid of
17 Racketeering). The charges arising from the same events charged in the initial
18 Complaint and Indictment, the Superseding Indictment against Bundy again
19 charging him with four counts in violation of Title 18, United States Code, Section
20 924(c) (use and carry a firearm in relation to a crime of violence).

22 Appearng before United States Magistrate Judge Hoffman on March 10,
23 2016, Bundy was arraigned on the charges in the Superseding Indictment, a plea of
24 Not Guilty being entered on all counts. On March 17, 2016, Judge Hoffman granted

Bundy's motion to re-open his detention hearing, allowing Bundy to proffer additional evidence regarding his standing in the community, the evidence consisting principally of letters from supporters attesting to their views of Bundy's reputation in the community, the letters referenced by Bundy in the instant Motion. *See* Judge Hoffman's Order, Ex. 1 at 2; Transcript Nevada Re-Opened Detention Hearing, attached at Exhibit 4 at pp. 9-13.

After re-opening the detention hearing and considering the evidence and argument presented, Judge Hoffman ordered Bundy's continued detention. Ex. 1 at 4. Finding, among other things, that "there is no question that Bundy is the leader, organizer, and primary beneficiary of the conspiracy charged in the complaint and indictment" (id. at 3), that there is "a roughly 20-year history of continuous violations of court orders," and that "Bundy will take the same action again and 'do whatever it takes,' even at the cost of substantial injury to person in this community" (id. at 4), Judge Hoffman, like Judge Stewart before him, weighed the Section 3142(g) factors and found that Bundy presented both a risk of nonappearance and a danger to the community under the appropriate evidentiary standards. *Id.* at 3 and 4.

LEGAL STANDARD

This Court reviews Judge Hoffman's Detention Order *de novo*. *United States v. Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990); *see also United States v. King*, 849 F.2d 485, 491 (11th Cir. 1988); *United States v. Maull*, 773 F.2d 1479, 1481 (8th Cir. 1985) (*en banc*); *United States v. Leon*, 766 F.2d 77, 80 (2d Cir. 1985). Accordingly, the Court may review the evidence presented to the Magistrate Judge and make its

1 own independent determination. *Koenig*, 912 F.2d at 1193 (“clearly, the district
2 court is not required to start over in every case, and proceed as if the magistrate’s
3 decision and findings did not exist...”). Or, it may take additional evidence and
4 consider further argument. *Id.*

5 Under the Bail Reform Act, a charge of a violation of Title 18, United States
6 Code, Section 924(c), provides a presumption, subject to rebuttal, that no condition
7 or combination of conditions will reasonably assure the appearance of the defendant
8 as required, and the safety of the community. *See* 18 U.S.C. § 3142(e)(3)(B). The
9 presumption “remains in the case as an evidentiary finding militating against
10 release, to be weighed along with other evidence relevant to factors listed in §
11 3142(g).” *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (*quoting*
12 *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986)).

13 The government may proceed in a detention hearing by proffer or hearsay, as
14 a defendant has no right to cross-examine adverse witnesses who have not been
15 called to testify. *See United States v. Winsor*, 785 F.2d 755, 756 (9th Cir. 1986).
16 “Neither the Ninth Circuit nor Congress intends the detention hearing to serve as a
17 mini-trial on the ultimate question of guilt.” *United States v. Bibbs*, 488 F. Supp.
18 925, 926 (N.D.Cal., 2007) (citing *Winsor* and overruling the objection to the
19 government’s proffer at detention hearing). Accordingly, the Court may “rely upon
20 investigatory descriptions of evidence (and similar hearsay) where the judicial
21 officer reasonably concludes that those descriptions, reports, and similar evidence,
22 in the particular circumstances of the hearing, are reliable.” *United States v.*
23 *Acevedo-Ramos*, 755 F.2d 203, 207 (9th Cir. 1985).

1 ARGUMENT

2 Given the *de novo* nature of the Court's review, the government adopts and
3 incorporates by reference all of the evidence proffered and arguments advanced in
4 the Oregon and Nevada detention hearings. Specifically, it references the
5 "Government's Memorandum In Support of Its Motion for Pretrial Detention"
6 (hereinafter "Opening Memorandum") (C.R. 24, pp. 38-71) (Attached at Exhibit 4),
7 and the detention hearing in Oregon (Tr. at Ex. 2) and the re-opened detention
8 hearing in Nevada (Tr. at Ex. 4).

9 As demonstrated in its Opening Memorandum, the government showed that
10 Bundy failed to rebut the presumption of detention that attaches in this case under
11 the Bail Reform Act and that the Section 3142(g) factors weighed heavily in favor of
12 detention, the proffered evidence showing, among many other things:

- 13 • Bundy is lawless and violent, having defied federal court orders for
14 over twenty years and violently assaulting law enforcement officers on
15 April 9 and April 12, 2014, while those officers were enforcing the
16 same orders that Bundy had recalcitrantly defied.
- 17 • Bundy and his conspirators pledged to use force and violence again in
18 the event the federal government sought to enforce federal court orders
19 against him.
- 20 • Bundy and his conspirators used threats of force and violence to
21 prevent any enforcement actions against him following the April 12
22 assault.

1 Bundy presents nothing new in his Motion either to rebut the presumption in
2 this case or undercut the findings of two United States Magistrate Judges who, in
3 two separate predicate hearings, specifically found that Bundy was a danger to the
4 community and presented a risk of non-appearance.

5 As he did in his two previous detention hearings, Bundy urges here that his
6 family ties, church membership, reputation for honesty, and standing within his
7 community – as purportedly demonstrated by letters of support submitted on his
8 behalf – rebut the presumption and weigh in favor of his release. Mot. 2-3. Yet, all
9 of these same factors were in place when Bundy, according to the Superseding
10 Indictment, organized, led and executed the conspiracy to use armed violence to
11 assault, obstruct and impede federal law enforcement officers while they were
12 impounding his cattle. Bundy does not explain how these factors outweigh his
13 violent conduct on April 12, or how these factors make him less of danger now than
14 he was on April 12 when he chose to command hundreds of Followers to assault law
15 enforcement officers with deadly weapons. Nor does he explain what, if anything,
16 has changed between then and now to demonstrate to the Court that he would not
17 keep his promise to “do it again” if and when law enforcement officers execute
18 federal Court Orders against him in the future.

19 Bundy also contends that the government has not advanced probable cause to
20 believe that Bundy committed crimes of violence. Mot. at 3. This contention is
21 simply untrue. A federal grand jury sitting in Las Vegas heard evidence and
22 returned a Superseding Indictment in this case, finding probable cause to believe
23 that Bundy committed 16 counts worth of violent crimes. At the time of his initial

1 detention hearing in Oregon, Bundy had been charged by Complaint supported by a
2 32-page affidavit, a United States Magistrate Judge in Nevada finding probable
3 cause to believe that Bundy committed at least the four crimes of violence charged
4 in the Complaint, all arising from April 12 assault. No further evidence of probable
5 cause is necessary or required at this stage of the proceedings.

6 Bundy speciously complains that there is “nothing” in the record to show that
7 he will not appear before this Court if ordered to do so and that he is, indeed, “law
8 abiding.” Mot. 4-5. Bundy completely ignores his twenty-year long refusal to follow
9 federal court orders – orders that issued from this Court – requiring him to remove
10 his cattle from the public lands. Bundy ignores his refusal to follow this Court’s
11 order not to interfere with any action taken to impound his cattle. And he ignores
12 his numerous public statements that do not recognize federal authority: e.g., “these
13 feds, I don’t recognize their jurisdiction or authority, so no, I won’t go with them.”
14 (referencing the possibility of his arrest). Ex. 5, p. 12. Or, “they [the federal
15 government] have no jurisdiction or authority, and they have no policing power . . .
16 they have no business here.” *Id.* Choosing to follow laws of his choosing does not
17 transform Bundy into a supposed law abiding citizen.

18 Nor is his claim of being a law-abiding citizen consistent with Bundy’s use of
19 body guards and armed patrols in the aftermath of the assault and extortion of
20 cattle. *Id.* at 20. Nor is it consistent with his post-assault involvement in the
21 unlawful takeover and armed occupation of the Malheur National Wildlife Refuge,
22 telling his Followers in February 2016 (after the arrest of his sons and before the
23 arrest of the remaining occupiers) that they should oust federal authorities from the

1 area: "This is not Ammon's message. This is my message. . . We've made the
2 decision to retain it (the Wildlife Refuge) . . . the feds are going to get out of there."

3 *Id.* at 22. Bundy's words and deeds betray any claim of being law-abiding.

4 None of his remaining claims rebuts the presumption in this case; they
5 simply quibble with the government's proffer. Mot. 8-12. A detention hearing is not
6 a mini-trial and the government may appropriately proffer evidence in support of
7 detention. *See Winsor*, 785 F.2d at 756 ("the government may proceed in a detention
8 hearing by proffer or hearsay"). As both Magistrate Judges Stewart and Hoffman
9 found, the evidence in this case was adduced following over 22 months of
10 investigation and the photographs and sourced quotations and evidence set forth in
11 the government Memorandum bear all the indicia of reliability. Bundy's claim that
12 the government must present more than what has been proffered to support Judge
13 Hoffman's detention order has no basis in law. When considering the Section
14 3142(g) factors, the evidence proffered in this case overwhelmingly supports
15 Bundy's continued detention both as a risk of nonappearance – based on his history
16 of refusing to recognize federal courts or federal court orders – and as a danger to
17 community based on the numerous crimes of violence charged in this case.

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CONCLUSION

WHEREFORE, for all the foregoing reasons, the government respectfully requests that the Court enter an Order denying Bundy's Motion and continuing his detention until the trial of this matter.

DATED this 19th day of April, 2016.

Respectfully submitted,

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//s//

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CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **Government's Response in Opposition to Defendant Cliven Bundy's Motion to Revoke Detention Order (C.R. 220)** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this 19th day of April, 2016.

/s/ Mamie A. Ott
MAMIE A. OTT
Legal Assistant